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OFFICE OF PETITIONS

In re Application of :
Stephen D. Newman :
Application No. 10/789,961 : DECISION GRANTING PETITION
Filed: February 27, 2004 : UNDER 37 CFR 1.55(c)
Attorney Docket No. 40302-0013 :
:

This is a decision on the petition under 37 CFR 1.55(c), filed October 17, 2005, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign Australian Application No. AU2001PR0007086, filed August 17, 2001.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and must be supplied on an application data sheet in accordance with 37 CFR 1.76 or on the oath or declaration
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period

specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on February 27, 2004, which is after November 29, 2000. Further, intermediate international Application No. PCT/AU02/01105 was filed on August 7, 2002, which is within 12 months of the August 17, 2001 filing date of the foreign application to which benefit is now being claimed. On July 30, 2004, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of \$1,370 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed foreign application under 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed foreign application. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. 119(a)-(d) and 37 CFR 1.55(c)(a)(2) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

It is noted that the revocation and power of attorney document submitted on January 6, 1006 lacks the required certification under 37 CFR 3.73(b). Accordingly, in order for the revocation and power of attorney to be proper, petitioner must comply with the provisions of 37 CFR 3.73(b). A form under 37 CFR 3.73(b) may be found on the USPTO Website to aid petitioner in complying with the provisions of 37 CFR 3.73(b).

This application is being forwarded to Technology Center AU 3728 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions